

LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
AUG 20 1958
JAMES R. BROWNING, Clerk

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No. 269

MARION S. FELINE, on behalf of him-
self and others similarly situated,
Petitioners,

VS.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

CLIFTON HILDEBRAND,
1815 Broadway, Oakland 12, California,
Attorney for Respondents.

D. W. BROOKS,
Tribune Tower, Oakland 12, California,
Of Counsel.

Subject Index

	Page
Question presented	2
Statute involved	3
Statement	3
Argument	6
The Court of Appeals' decision is correct	6
(a) There is no substantial question involved sufficient for the granting of a writ of certiorari by this court	6
Conclusion	15

Table of Authorities Cited

Cases

Pages

Atlantic Coast Line R. Co. v. Pope, 119 F. 2d 39	14
--	----

Statutes

Railway Labor Act as amended (45 U.S.C., Section 151, et seq.)	3
Section 2, First	9
Section 2, Eleventh	2, 3, 7
Section 2, Eleventh (b)	6, 10
Section 3, First (h)	4
28 U.S.C. 1332, 1337 and 2201	3

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of him-
self and others similarly situated,

Petitioners,

vs.

SOUTHERN PACIFIC COMPANY, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Respondents, herein, respectfully show:

QUESTION PRESENTED.

Pursuant to the permission granted by Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152; Eleventh), Respondents Southern Pacific Company and Brotherhood of Railroad Trainmen, a voluntary association, entered into a Dues Deduction Agreement. This Agreement provided that employee members of the Brotherhood of Railroad Trainmen, a voluntary association, could authorize deductions from their wages for dues, assessments, etc., or revoke such authorization by properly filling out forms in writing to be reproduced and furnished by the Brotherhood of Railroad Trainmen, a voluntary association. The Brotherhood of Railroad Trainmen, a voluntary association, was to notify the Southern Pacific Company of these wage deductions and revocations by forwarding the completed forms by the 5th of each month. The written assignments and written revocations thus forwarded would be effective as of the first day of that month.

The question presented is, then, whether such an agreement constitutes a violation of the Railway Labor Act by restricting the employee's right to change unions or to revoke his authorization to deduct dues and assessments from his wages, because the employee is required to revoke his authorization in writing on forms "reproduced" by the Brotherhood of Railroad Trainmen, a voluntary association.

STATUTE INVOLVED.

The statute involved is the Railway Labor Act as amended (45 U.S.C., Section 151, et seq.). The sections involved have been set forth in Appellees' Petition for Writ of Certiorari as Appendix "B" at Page XII.

STATEMENT.

This is a suit for declaratory and injunctive relief brought pursuant to 28 U.S.C. 1332, 1337 and 2201 for the purpose of determining a question in actual controversy between Petitioner Felter, and others similarly situated, and Southern Pacific Company, a corporation, and Respondents Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, to-wit:

The question of the validity under the Railway Labor Act, 45 U.S.C. 152 (Eleventh), of a written collective bargaining agreement which became effective August 1, 1955 (R. 74-80). This agreement, which is now and at all times material has been in effect between the Southern Pacific Company and the Brotherhood of Railroad Trainmen, provides in effect that the Southern Pacific Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the Southern Pacific Company by mem-

bers thereof from "wages earned in any of the services or capacities covered in Section 3, First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto * * *." This arrangement is commonly referred to as a "Dues Deduction Agreement." This Dues Deduction Agreement (R. 74-80) provides (in part):

"1. (a) Subject to the terms and conditions of this agreement the Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties) payable to the Organization by members thereof from wages earned in any of the services or capacities covered in Section (3) First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto, copy of which is attached as Attachment "A" and made a part hereof.

(b) The signed authorization may, in accordance with its terms, be revoked in writing at any time after the expiration of one year from the date of its execution, or upon the termination of this agreement, or upon the termination of the rules and working conditions agreement between the parties, whichever occurs sooner. Revocation of the authorization shall be in the form agreed upon by the parties, copy of which is attached as Attachment "B" and made a part hereof.

(c) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company.

2. Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employee is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employee's name, employee account number, and the amount to be deducted in the form approved by the Company. Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a) A list showing any changes in the amounts to be deducted from the wages of employees with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; also the names of employees from whose wages no further deductions are to be made which shall be accompanied by revocation of assignment forms signed by each employee so listed. Where no changes are to be made the list shall so state.

(b) A list showing additional employees from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employee so listed. Where there are no such additional employees the list shall so state."

ARGUMENT.

THE COURT OF APPEALS' DECISION IS CORRECT.

(a) There is no substantial question involved sufficient for the granting of a Writ of Certiorari by this Court.

The opinion of the Court of Appeals for the Ninth Circuit as set forth in Petitioners' Petition for a Writ of Certiorari as Appendix "A" and the Order of the United States District Court for the Northern District of California, Southern Division, as set forth at Page V of the Appendix to Petitioners' Petition for a Writ of Certiorari, both hold that there is nothing contained in the agreement under attack which, in any way, unreasonably or arbitrarily restricts the right of an employee not only to change his union affiliation, but to revoke any authorization he might have given for deduction of dues and assessments from his wages. The question here presented deals only with the procedural administration of Section 2, Eleventh (b) of the Railway Labor Act as amended. There is no substantial question involved as to the interpretation of the provisions here involved or with relation to any uncertainties in the application of such provisions. Certainly, no valid argument can be made that procedure for the orderly administration

of the provisions of the Act would constitute a restriction upon any of the rights given the employee by the provisions of that Act. There is nothing confusing in the terms of the agreement in question. It specifically provides that where a member who has signed a written authorization for the employer Southern Pacific Company to deduct from his earnings membership fees, etc., that a revocation of that authorization must be made upon a form "reproduced and furnished" by the Brotherhood of Railroad Trainmen which forms, in turn, are to be presented to the employer Southern Pacific Company through the Brotherhood of Railroad Trainmen. Certainly, such a requirement as far as revocation of a dues deduction authorization is concerned is valid under Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh). The exact language of the agreement is as follows:

"(c) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished by the organization without cost to the company. The organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the company." (R. 75.)

Under the terms of this agreement there is nothing that in any way prohibits the employee from changing his union affiliation or from revoking his authorization for deductions from his wages. The only thing that is required under this agreement is that a simple procedure be followed that is outlined in the agreement, that is, he is to make out his authorization

upon a form supplied by the Brotherhood of Railroad Trainmen if the employee is a member of that union. This is a procedure worked out between the Southern Pacific Company and the Brotherhood of Railroad Trainmen to prevent confusion and to establish an orderly and systematic bookkeeping system. This was recognized by the District Court and also by the Court of Appeals.

"The trial judge was of the opinion that the Act should be given a workable interpretation; that the requirement of special forms was merely to facilitate orderly procedure and to aid effective bookkeeping; and that this should be allowed if it does not place an unreasonable burden on the employee's right to change unions. He concluded that it did not, more especially in this case where the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them.

We are of the opinion that the trial court's appraisal of the case is correct, and the judgment is accordingly affirmed."

(See Opinion U.S. Court of Appeals, Appendix "A", Page IV Petition for Writ of Certiorari.)

There are two distinct requirements of the Dues Deduction Agreement with reference to revocation of a dues deduction authorization. One is that the revocation must be on forms "reproduced and furnished" by the Brotherhood of Railroad Trainmen and the other is that the forms must be delivered to the Southern Pacific Company through the Brotherhood

of Railroad Trainmen together with certified deduction lists on or before the 5th day of the month in which the change in deductions is to become operative (R. 75). The requirement that a revocation must be presented by the Brotherhood of Railroad Trainmen to the Southern Pacific Company is certainly a reasonable requirement for the orderly administration of the Dues Deduction Agreement. The Brotherhood of Railroad Trainmen was the representative of the Petitioner and it had the burden of insuring the Southern Pacific Company that revocations were proper and that the calculations in the amounts to be deducted were accurate which, in turn, would effect the responsibility of the Brotherhood of Railroad Trainmen for keeping accurate and up-to-date lists. Such a provision clearly serves the purpose of avoiding disputes and controversies that might arise between the Brotherhood of Railroad Trainmen and the Southern Pacific Company and is in accord therefore with the express purpose of the Railway Labor Act (45 U.S.C., Section 152, First). Unless the revocation is sent through the Brotherhood of Railroad Trainmen, there is no way that the Brotherhood of Railroad Trainmen would know when an employee had revoked or attempted to revoke his existing authorization for the deduction of his dues. Such a revocation without coming through the Brotherhood of Railroad Trainmen, if accepted by the Southern Pacific Company, would only lead to confusion and dispute. Consequently, the requirement that revocations be transmitted through the Brotherhood of Railroad Trainmen to the Southern Pacific Company in

no way interferes with the right of the employee to make such a revocation but simply sets up a reasonable and sensible procedure for the orderly administration of the Dues Deduction Agreement. It is just as simple and just as easy for the employee to send the revocation to the Brotherhood of Railroad Trainmen as it is to send it to the Southern Pacific Company and it is a lot less confusing and certainly prevents any misunderstanding or dispute. Certainly, no serious argument can be made that this in any way interferes with a member's right or privilege to change from one union to another. The only purpose of the provisions of the Dues Deduction Agreement requiring that a revocation be sent through the members' representative union, here, the Brotherhood of Railroad Trainmen, is to simplify the administration of the Dues Deduction Agreement, a purely procedural matter having nothing to do with the substantial rights of the appellant.

The Railway Labor Act (45 U.S.C., Section 152, Eleventh (b)) contains nothing with reference to the procedure to be followed in making deductions from wages except that the authorizations and revocations shall be in writing. As to how such authorizations and revocations are to be processed or what procedure is to be followed is not set out in the Act. Unless some orderly procedure is established by agreement, such as was done here, confusion and misunderstanding would result. If this confusion and misunderstanding is to be avoided or reduced to a minimum a procedure such as was established by the agreement here

must be followed. The procedure to be followed has been left to the parties when and if they "make agreements providing for the deduction." The requirement that revocation forms be "reproduced and furnished" by the Brotherhood of Railroad Trainmen serves a desirable objective. By requiring that the representative union of the employee, here the Brotherhood of Railroad Trainmen, furnish its own form for revocation, either in person or by mail, it can feel reasonably assured when the correct form is returned that it is the result of the decision of the employee and that he has not been the victim of a raid or has been high-pressured or unduly influenced. It is no more of a burden for a member to ask his union, here the Brotherhood of Railroad Trainmen, to provide him with a correct form than it would be for him to make a request to some other union. Here, the evidence shows that immediately upon receipt of a letter stating that appellant had resigned from membership a form for revocation of his dues deduction authorization was mailed without comment to appellant. He was no more restricted, coerced, or otherwise deterred from properly revoking his authorization for dues deductions than he was when he voluntarily followed the agreement and obtained the correct form from the Brotherhood of Railroad Trainmen at the time he made his original authorization. It would be perfectly logical for him to follow the same procedure he followed in authorizing dues deductions when he desired to revoke the authorization. Certainly, there is nothing unreasonable in requiring that he request the proper form from

the Brotherhood of Railroad Trainmen either by phone, or in writing, where there is no evidence that the Brotherhood of Railroad Trainmen in any way hesitated in supplying the proper form for revocation when requested. Had there been the slightest interference with the right of appellant to obtain a proper form to revoke his authorization, then there might have been some ground for claiming his right or privilege to change unions had been obstructed. It is difficult to see how requiring the appellant to follow the procedure set out in the Dues Deduction Agreement to request a correct form from the Brotherhood of Railroad Trainmen can constitute an unreasonable burden or any burden at all upon appellant's right to change unions since he obviously cannot change his union affiliations without informing the Brotherhood of Railroad Trainmen of his withdrawal and, in the withdrawal, he certainly can request a form for revocation of his dues deduction authorization.

Appellant's failure to have his revocation accepted by the Southern Pacific Company was due entirely to his wilful refusal to send the correct form to the Brotherhood of Railroad Trainmen.

"* * * the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them."

(See Opinion of Court of Appeals, Appendix Petitioner's Petition.)

Petitioner has argued that if required to obtain the proper form from the Brotherhood of Railroad Trainmen that he would be subjected to pressures not to revoke his wage assignment and, above all, not to change his affiliation. There is absolutely nothing, either in the record or in the Dues Deduction Agreement, to substantiate these charges. The Brotherhood of Railroad Trainmen had the proper forms available for use by the Petitioner and, as the evidence shows, the correct form was furnished and supplied to the appellant immediately upon receipt of his notification of withdrawal. The appellant did not see fit to return this correct form to the Brotherhood of Railroad Trainmen which was just as simple as sending his withdrawal to the Brotherhood of Railroad Trainmen which was accepted without comment. The correct form was mailed to appellant with no personal contact either having been made, requested, or required (R. 25). The facts refute Petitioner's contentions the Brotherhood of Railroad Trainmen would refuse to furnish the correct forms except under circumstances whereby the appellant would be subjected to pressures not to change his union affiliation. The only reason Petitioner failed to accomplish his objective of revoking his wage assignment was his wilful refusal to perform the simple act of filling out and returning the correct form which was actually furnished to him by the Brotherhood of Railroad Trainmen without even a formal request.

Petitioner, having been a member of the Brotherhood of Railroad Trainmen, was actually a party to

the Dues Deduction Agreement which Agreement he accepted and followed when it was convenient for him to do so. The Brotherhood of Railroad Trainmen was the chosen representative of the Petitioner. When agreements are entered into by the collective bargaining representative, they are binding upon the members of that bargaining organization.

“Other parts of the Act expressly provided for the complete independence of employees in the matter of self-organization, and the right of employees to organize and bargain collectively through representatives of their own choosing, and conferred upon the majority of any class of employees the right to determine who should be the representatives thereof. Section 2 (Fourth) of the Act of May 20, 1926, as amended by the Act of June 21, 1934, 45 U.S.C.A. Secs. 151a and 152, Fourth. There can be no doubt that the action of a majority of employees in the selection of representatives *and the action of the representatives themselves, so selected were intended to be binding upon the whole class of employees.*”

Atlantic Coast Line R. Co. v. Pope, 119 F. 2d 39 at 43.

Petitioner was fully aware of the terms of the agreement entered into by and between the Brotherhood of Railroad Trainmen and the Southern Pacific Company because he obtained the correct form to make his original wage deduction authorization. As a matter of fact, Petitioner has never contended that he did not know that the agreement provided that the revocation forms were to be “reproduced and fur-

nished" by the Brotherhood of Railroad Trainmen. Petitioner knew the terms of the agreement. He knew he had to obtain the form from the Brotherhood of Railroad Trainmen. The Brotherhood of Railroad Trainmen voluntarily furnished him with the correct form and the only reason Petitioner failed to have the Southern Pacific Company stop deductions from his wages in accordance with his original authorization was his apparent deliberate wilful failure to follow the procedures of the contract which he ratified and with which he was familiar and pursuant to the terms of which he had originally authorized the deductions.

CONCLUSION.

In summing up, Respondents Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, contend that there being no procedural set-up in the Railway Labor Act for administering dues deductions that a Dues Deduction Agreement may provide a reasonable and orderly procedure to govern its operation so long as the privilege of an employee to change unions is free of unreasonable burdens. Both the Dues Deduction Agreement and the facts of this case show that the method of revocation as set out in the Dues Deduction Agreement is reasonable and serves the purpose of avoiding disputes in accordance with the express purpose of

the Railway Labor Act and does not constitute an unreasonable burden upon Petitioner's privilege of changing unions. There certainly can be nothing unreasonable about requiring the member of a union to conduct his business through the union in an orderly manner. Therefore, it is respectfully submitted, that the opinion of the United States Court of Appeals for the Ninth Circuit is correct.

And, for the reasons expressed, it is submitted that Petitioner's request for issuance of the Writ of Certiorari to review the judgment of the Court of Appeals for the Ninth Circuit should be denied.

Dated, Oakland, California,
August 27, 1958.

Respectfully submitted,

CLIFTON HILDEBRAND,

Attorney for Respondents.

D. W. BROBST,
Of Counsel.